

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 05-80554

HON. LAWRENCE P. ZATKOFF

v.

VICTOR CASTANO, D-1,

Defendant.

OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse,
in the City of Port Huron, State of Michigan, on April 17, 2006

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This matter is before the Court on Defendant Victor Castano's April 4, 2006 Motion for Release. The Government has responded. The Court finds that the facts and legal arguments are adequately presented in the parties' papers and the decision process would not be significantly aided by oral argument. Therefore, pursuant to E.D. MICH. LR 7.1(e)(2), it is hereby ORDERED that the motion be resolved on the briefs submitted. For the reasons set forth below, Defendant's Motion for Release is DENIED.

II. ANALYSIS

On February 21, 2006, Defendant Victor Castano pleaded guilty to one count of possession with intent to distribute marijuana. Defendant proceeded to trial on the remaining counts of the indictment: felon in possession of a firearm and carrying a firearm to a drug trafficking crime. Following a jury trial, on February 23, 2006, Defendant was found guilty on the remaining two counts, and was remanded to custody to await sentencing.

By the present motion, Defendant requests this Court to allow Defendant's release for any period of time between now and sentencing so that Defendant may have final visits with his doctors regarding his ongoing medical problems and so that Defendant will be able to say goodbye to his children. Defendant asserts that he has never been late to any court proceedings, that he is not a danger to the community, and that he is no more a risk of flight now than he was prior to trial.

The Government asserts that Defendant has not met the standard for release governed by 18 U.S.C. § 3143. 18 U.S.C. § 3143(a)(2) states:

The judicial officer shall order that a person who has been found guilty . . . and is awaiting imposition or execution of sentence be detained unless . . . the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

The Court agrees with the Government and finds that Defendant has failed to present clear and convincing evidence that Defendant is not likely to flee or pose a danger to the community. Defendant's request for release in order to receive medical treatment and in order to say goodbye to his family fails to provide the Court with any evidence that Defendant is not likely to flee or pose a danger to the community. Defendant's assertion that he is no more likely to flee now than he was prior to trial is also unconvincing and fails to provide the Court with any evidence, other than the Defendant's own assertions, that he is not a flight risk or a danger to the community. Defendant's

prior history does not support his assertions.

Defendant is a member of the Devil's Disciples, an organization which has members throughout the country. Defendant's membership offers him the ability to travel and reside outside of Michigan for lengthy periods of time. Prior to his arrest under the current indictment, Defendant utilized these resources and resided outside of Michigan for a number of months. When he finally returned, he was arrested by the FBI. The Court remains unconvinced that Defendant would not utilize these resources in the future in order to avoid a prison sentence.

Because Defendant has not shown clear and convincing evidence that he is not a risk of flight or a danger to the community, Defendant's Motion for Release should be denied.

III. CONCLUSION

For the above reasons, the Court HEREBY DENIES Defendant's Motion for Release.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: April 17, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on April 17, 2006.

s/Marie E. Verlinde
Case Manager
(810) 984-3290